

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

MIGUEL ANGEL GAONA	§	
VS.	§	CIVIL ACTION NO. 9:12-CV-30
CAPTAIN PATRICK D. DICKENS, <i>et al.</i> ,	§	

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Plaintiff, Miguel Angel Gaona, a state prisoner formerly confined at the Polunsky Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action against the following defendants: Captain Patrick D. Dickens, Major Joe Smith, Theresa L. Ferris, Lieutenant Raymond W. Newberry, and Warden T. Simmons.<sup>1</sup>

The court referred this matter to the Honorable Keith Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the claims against Warden T. Simmons be dismissed for failure to state a claim and as frivolous pursuant to 28 U.S.C. § 1915(e)(2).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Plaintiff filed objections to the Magistrate Judge’s Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

Based on plaintiff’s objections, it would appear it is plaintiff’s belief that the Magistrate Judge is recommending the entire civil rights action be dismissed and plaintiff objects to the dismissal of the entire suit. The Magistrate Judge, however, recommended only that the claims against Warden T. Simmons be dismissed. Plaintiff makes no substantive objection to this

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<sup>1</sup>Plaintiff filed an amended petition on January 3, 2014 adding Correctional Officers Gary Spencer and Kristine O’Brian as defendants.

recommendation. As such, the court finds the objections lacking in merit.

ORDER

Accordingly, the objections of petitioner are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A partial judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

So **ORDERED** and **SIGNED** this **13** day of **January, 2014**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge